

**ST 02-17**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties  
Use Tax On Out-Of-State Purchases Brought Into Illinois**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

v.

**JOHN DOE**

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) 0000-0000  
) 00 00000000000000  
)  
) Mimi Brin  
) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue; JOHN DOE, pro se

**Synopsis:**

This matter comes on for hearing pursuant to JOHN DOE's (hereinafter the "Taxpayer" or "Doe") protest of Notice of Assessment 00000000000000, issued by the Illinois Department of Revenue (hereinafter the "Department") for tax, penalty and interest assessed pursuant to the Use Tax Act. Taxpayer, while residing in Canada, bought an automobile in Canada days before moving to Illinois as a resident alien. Taxpayer paid Canadian a sales tax on the automobile purchase. Taxpayer procured license plates in Illinois, and did not pay any use tax at the time claiming payment of such tax in Canada. Taxpayer did, however, pay the tax, penalty and interest assessed by the

Department prior to the hearing date of the matter. The issues presented are: 1) whether taxpayer may claim an offset for the taxes paid on the automobile purchase in Canada, and 2) if not, whether there are grounds for the abatement of penalties assessed. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department on the first issue, and in taxpayer's favor on the abatement of penalties issue. In support of this recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Assessment for Form RUT-25, no. 00 0000000000000, issued on July 24, 2001. Department Ex. No. 1
2. The Department revised its assessment of tax due based upon its corrections of the rate of exchange between Canada and the United States on the day taxpayer purchased the automobile in Canada and paid the Canadian sales taxes. Department Ex. No. 2
3. Taxpayer purchased a Honda Civic automobile in Toronto, Canada on January 22, 2001 and paid tax thereon in Canadian currency.
4. Taxpayer brought the automobile into Illinois January 28, 2001, when he became a resident alien of the State. Tr. pp. 13, 19

5. Taxpayer filed the necessary use tax return for motor vehicles with Illinois on February 20, 2001, claiming a credit for the tax he paid on the vehicle in Canada. Department Ex. No. 2
6. Taxpayer did not pay, to Illinois, any use tax on the automobile after bringing into Illinois and obtaining Illinois license plates for it.
7. Taxpayer paid the Department the tax of \$865.00, as adjusted, on September 20, 2001, and a late payment penalty of \$130.94 and interest of \$39.94 on October 3, 2001. Taxpayer Ex. No. 1

**Conclusions of Law:**

The Illinois Use Tax Act, 35 **ILCS** 105/1 *et seq.*, (hereinafter the “UTA”) is “[a] tax imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer... .” *Id.* at 105/3 In addition, the UTA provides that in the case of motor vehicles, one who purchases such tangible personal property from an out-of-state retailer, shall file an appropriate return for the motor vehicle within 30 days after such motor vehicle is brought into Illinois for use. *Id.* at 105/10 The form shall advise the Department, *inter alia*, of the cost of the motor vehicle, as well as the amount of tax collected from the purchaser by the retailer on account of the purchase. *Id.*

There is no question that Doe purchased the automobile in question from a retailer in Canada. There is also no question that he paid tax to the Canadian retailer based upon the cost of the automobile. When the taxpayer obtained Illinois license plates for the vehicle after establishing residency in this State as a resident alien, he filed, on February 20, 2001, an appropriate use tax return, wherein he claimed a credit for the tax he paid in

Canada. He was not advised that any further use tax payment was due to Illinois until the Department so advised him in July of 2001.

The exemption taxpayer claims is based on the provisions found in the UTA, §3-55. Specifically, the statute provides, in pertinent part:

Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by the Act does not apply to the use of tangible personal property in this State under the following circumstances:

xxx

- d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State.

35 **ILCS** 105/3-55 (d) The Department has promulgated a regulation which mirrors the statutory provision, but adds that “for this purpose, ‘state’ includes the District of Columbia”. 86 Ill. Admin. Code, sec. 150.310 (a)(3)

It is the Department’s position that no credit is given in Illinois for use-type taxes paid in another country. This argument has merit. The UTA does not define “state”. Thus the only definition for “state” for use tax purposes is found in the regulation, that has the force and effect of law. Tivoli Enterprises, Inc. v. Zehnder, 297 Ill. App.3d 125, 132 (2<sup>nd</sup> Dist. 1998) Although the regulatory definition provides for the inclusion of the District of Columbia as a “state”, it quite clearly does not include a provision for a foreign country. Compare 35 **ILCS** 5/1501(22) (definition of “State” to include, *inter alia*, “any foreign country”) If the legislature intended to allow a credit for sales tax paid in a foreign country, it certainly could have done so. However, it did not. Therefore, I

conclude that the legislature did not intend to allow a credit for use taxes paid for tangible personal property purchased in a foreign country.

The second issue is whether there exists reasonable cause to abate the penalties assessed and paid in this matter. The Uniform Penalty and Interest Act (35 **ILCS** 735/3-1 *et seq.*) allows for the abatement of penalties assessed for the late filing or payment of sales or use taxes if reasonable cause exists. Id. at 735/3-8 Department regulations address reasonable cause abatement, in pertinent part, as follows:

b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.

c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. ...

d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. ...

86 Ill. Admin. Code section 700.400 (b) (c) (d)

Within a short period of time of bringing the automobile into Illinois, Doe went to a Secretary of State's office to procure license plates for the vehicle. He filled out the necessary use tax return and provided the necessary information regarding the payment of the taxes to the Canadian car dealer. He was not advised that he would not be allowed the credit until the Department's Notice of Assessment. The taxpayer protested the assessment, and after the Department amended the amount of tax due, based upon the

proper exchange rate between Canada and the United States, the taxpayer paid the tax, penalty and interest demanded.<sup>1</sup>

I conclude that, under the facts of this case, there is reasonable cause to abate the penalties assessed in this matter.

**WHEREFORE,** it is recommended that Notice of Assessment 00000000000000 be finalized as to the tax due, but that any penalties be abated, and that any interest amount due be correspondingly recalculated.

6/26/02

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Mimi Brin  
Administrative Law Judge

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<sup>1</sup> Department's counsel was unaware, at the time of the hearing, that payment had been made on this assessment. At the close of the hearing, he verified that payment had been made, and, that, if the Director's determination was that a refund was due, it would be made to the taxpayer.